

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 11, 1999 at 8:30 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 369, 2/5/1999
SB 351, 2/5/1999
SB 414, 2/9/1999
SB 379, 2/5/1999
SB 378, 2/5/1999
SB 377, 2/5/1999
Executive Action: SB 318; SB 315
SB 275; SB 373
SB 240; SB 331
SB 347; SB 410

*{Tape : 1; Side : A; Approx. Time Counter : 0 - 23; Comments : Senator Ric Holden explained the amendments **EXHIBIT**(bus34a01) of SB 263. Senate Bill 123, SB 125 and SB 126 were discussed with no executive action taken.}*

EXECUTIVE ACTION ON SB 318

Motion: SEN. BEA MCCARTHY moved that SB 318 DO PASS.

Discussion: SEN. JOHN HERTEL asked if there were any amendments. Mr. Bart Campbell, Legislative Counsel, said that no amendments had been directed to him by any of the committee.

Substitute Motion/Vote: SEN. SPRAGUE made a substitute motion that SB 318 BE TABLED. Substitute motion carried 6-1.

EXECUTIVE ACTION ON SB 315

Motion/Vote: SEN. COCCHIARELLA moved that SB 315 BE TABLED. Motion carried unanimously. 7-0

HEARING ON SB 369

Sponsor: SENATOR KEN MILLER, SD 11, LAUREL

Proponents: Frank Cote, Deputy Insurance Commissioner
Susan Witte, Blue Cross/Blue Shield

Opponents: None

Opening Statement by Sponsor:

SENATOR KEN MILLER, SD 11, LAUREL. This bill is actually a pretty simple bill, though we already have some amendments -- you have those **EXHIBIT (bus34a02)**. Right now for a conversion policy of health insurance, there's a cap of 200% that an insurance company can charge above what the policy premium was before the conversion. The 200% has always bothered me because if someone was responsible and had health insurance and became ill, their insurance shouldn't go so high that it prices them out of being able to have health insurance. There's also a cap of 150%, but that's only after you had insurance for three consecutive years, i.e. if you had insurance for three years or longer, and you become ill, the most the insurance company could raise the premium would be 150%. I hope the committee will look favorably on SB 369.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner. We, too, support

SB 369 with the amendments. I think it makes sense that people who have been insured for three months be allowed to continue as is, but those people who have been long-term (three years or more) should be kept at 150%.

Susan Witte, Blue Cross/Blue Shield (BC/BS). BC/BS does support **SB 369**; however, we haven't had a chance to see the amendments, though we understand they change the bill around somewhat. We do support **SB 369** if the 200% cap, currently set at 150% by the bill, is raised to 185% as per the amendments **EXHIBIT (bus34a03)**.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 33.1}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE commented he supposed BC/BS would be more opposed if the 150% was reduced to the 125%. **Susan Witte** said they would be opposed. **SEN. SPRAGUE** asked if 150% would be a compromise. **Ms. Witte** answered their actuary told them some conversion rates were living with 165% and they had thought of coming in at 175% but used 185%. She thought they could go to 165%.

SEN. VICKI COCCHIARELLA asked for more clarification, saying she understood if she was part of a group health plan and wanted to leave the group and go out on her own, the premiums could be no more than 150% of what they were when she was part of the group. **Frank Cote** said that wasn't quite accurate. He referred to the amendments **EXHIBIT 2** and said if you had been insured for less than three years in a group plan, and you want to leave that plan and get a conversion policy, you would pay up to 200% of the average of the insurance company's premiums. With the amendments, if you've been insured for three years, it would be up to 150% of the average individual rate.

SEN. COCCHIARELLA asked if individual experience was taken into account. **Mr. Cote** said they weren't.

SEN. BEA MCCARTHY asked where, in the case of a person who was insured for three years but terminated employment and wanted to take the health policy, that policy would be taken. **Frank Cote** said if you are part of a group health plan because of where you are employed and you leave that employment, you can take a conversion policy (convert the group policy to an individual policy) for which you as an individual pay.

SEN. MCCARTHY asked what "3 months" on Line 24 meant. **Frank Cote** said if you had been a member of that group insurance for at least three months, and you left the group and converted the group insurance to an individual policy, the insurance company would be able to charge up to 200% of the individual premium.

SEN. JOHN HERTEL asked **Frank Cote** if they were willing to change it to 150% and was told they were willing to leave existing law the way it was -- "3 months up to 3 years" -- and leave it at 200%. However, the amendments addressed people who had been long-term insureds. We think they deserve the respect long-term commitment should receive. Therefore, those people would be capped at 150%.

{Tape : 1; Side : A; Approx. Time Counter : 42.4}

Closing by Sponsor:

SENATOR MILLER said it was his feeling that someone who has had relatively few health problems their entire life but starts to have them, and has to leave the group insurance for a conversion individual policy, should be able to convert at a reasonable rate, preferably 125% or 100%.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON SB 351

Sponsor: **SENATOR GREG JERGESON, SD 46, CHINOOK**

Proponents: **Pat Molyneaux, Chinook**
Tom Finley, Eagles Club, Chinook
Jerry Pyitte, Eagles Club, Chinook

Opponents: **None**

Informational Testimony: **Rick Ask, Gambling Control, Department of Justice**

Opening Statement by Sponsor:

SENATOR GREG JERGESON, SD 46, CHINOOK. **Senate Bill 351** is needed during charitable fund-raising events at a casino where cash prizes may be offered. Current law allows merchandise prizes but not cash. This bill is not a major expansion of gambling; rather it allows fraternal organizations and clubs to hold a casino night for charity and offer cash prizes.

Proponents' Testimony:

Pat Molyneaux, Chinook Eagles Club. As a club, we have three fund-raisers a year, and the average brought in on one smoker is \$800-\$900 or about \$2,500-\$3,000 a year. We feel that without cash prizes, our turnout will drop and charitable money diminish.

Tom Finley, Chinook Eagles Club. Our smokers are run in this way: When you come in the door, you deposit \$5 which covers lunch and refreshments for the evening. We sell chips and take a rake of 10% which goes into our charity funds. We hold several raffles. Most of our participants are nickel, dime and quarter players. As we understand current law, we'd have to license the poker table which would make us starting off at \$1,500 in the hole.

Jerry Pyitte, Chinook Eagles Club. I've called the majority of other Montana Eagles organizations and they're also in favor of **SB 351**. We are a fraternal order and therefore are non-profit; our whole goal is to raise money for charity. Other than money needed to run the organization, all money goes to charity. We're in a small community and we seem to be losing businesses -- it's really difficult for even an Eagles Club to survive and it's because of more regulations. Eagles Clubs are organizations of people who have fun raising money and we give it all to charity.

Opponents' Testimony: None.

Informational Testimony:

Rick Ask, Gambling Control Division. If you have any questions, I'm here to answer.

{Tape : 1; Side : B; Approx. Time Counter : 6.9}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE said it was the committee's job to deal with unintended consequences and asked if there were any, from the Department's point of view. **Rick Ask** said Section 711 exempts casino nights from betting payoff limitations because of the way casino night is run. It is usually described as imitation money which is used to purchase donated merchandise used for prizes for the various events. Our concern was limitations for cash payoffs.

SEN. SPRAGUE commented imitation money was a way of circumventing using real money. Will participants be converting the "funny money" into real money at the face value rate at the end of the

night? **Mr. Ask** said current statute would say "no" because the "funny money" has to be used to purchase merchandise.

SEN. BEA MCCARTHY commented according to the bill, winners would have the option of either merchandise or cash. **Rick Ask** said she was correct.

SEN. MCCARTHY asked if the Department, in its negotiations with the Senator, would oppose the bill if it was brought forward.

Mr. Ask said if the limitations were put into place they would. The amendments were to apply prize limits to Parts (3) and (4). The limits would be Keno - \$100 a card; Bingo - \$100 a card and Poker - \$300 a pot.

SEN. MCCARTHY asked if there was a stipulation on prize accumulation for the evening. **Mr. Ask** said the limitation was per game/per card.

SEN. GLENN ROUSH asked if there would be a limitation on how many times an organization could use casino nights. **SEN. JERGESON** said he thought the number of casino nights was described somewhere else in statute.

SEN. HERTEL commented there had been discussion and he wondered if **Pat Molyneaux** was comfortable with the limitations. **Mr. Molyneaux** said it would.

Closing by Sponsor:

SENATOR JERGESON. Perhaps this bill needs some amendments to cover some concerns of the Department -- I would be willing to look at that.

(**SEN. HERTEL** asked the Department to come up with the amendments and get them to Bart Campbell).

{Tape : 1; Side : B; Approx. Time Counter : 15.2}

HEARING ON SB 379 AND SB 414

Sponsor: **SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS**

Proponents: **Mona Jamison, Attorney, Montana Life and Health Insurance Guaranty Assoc.**
Frank Cote, Deputy Insurance Commissioner
Lloyd Bender, Board Member, MLHIGA

Opponents: **None**

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD. 36, ST. REGIS. He read his written opening **EXHIBIT (bus34a04)** and distributed copies of **EXHIBIT (bus34a05)**.

Proponents' Testimony:**Mona Jamison, Montana Life & Health Insurance Guaranty**

Association. When CI-75 passed and I wondered if this bill would apply to this act, I finally concluded it didn't matter because of the personal liability provision. However, I couldn't say without a doubt it didn't apply, even if I didn't think it did, because I didn't want to put my board members at risk. If they ever did an assessment which qualified as a tax or increase, under CI-75 these people would be subject to personal liability. As an attorney advising a client, I have to make sure I have taken all steps to assure they won't be held personally liable. This law is probably one of the best-kept secrets in Montana. If you have a life insurance policy and the company becomes insolvent, this bill comes in and takes care of those policy holders in terms of their benefits so you're not left "holding the bag." The insurers, through this association, levy on themselves an assessment that goes into a pool to make those policy holders whole. Then, the national organization, if someone sells life insurance in Montana, puts a comparable policy out for bid so that another healthy life insurance company buys it, gets the premiums and basically makes it whole. It's a great law; however, if there's an insolvency and the association feels they must levy that assessment -- is that a new tax? In case CI-75 stands, they establish the Class B assessment which addresses what everybody has to kick in at a fixed rate, rather than it's been capped at 2% of the annual premiums. We believe then people have to vote on it only once. For purposes of CI-75, this board (the association) is not a governmental entity because CI-75 only applies to governmental entities. The members of this association are representatives of the insurance companies. Long-term, we have at risk the potential repeal of the statute passed years ago by the legislature that serves people with life insurance policies because of reading through everything and understanding it. We stand in support of both bills (**SB 414** and **SB 379**) and we urge yours as well.

{Tape : 1; Side : B; Approx. Time Counter : 26}

Frank Cote, Deputy Insurance Commissioner. I'm bringing amendments for **SB 379 EXHIBIT(bus34a06)** and **SB 414 EXHIBIT(bus34a07)**. The language in the amendment for **SB 414** was deleted in the original bill draft because the legislative council felt it was redundant; however, the language really wasn't. The amendments in **SB 379** are as follows: #1 may not be needed but it gives me peace of mind -- it mirrors the language in **SB 414**; #2 replaces language thought redundant; #3 & #4 give a better sales pitch for CI-75 vote.

Lloyd Bender, Montana Life & Health Guaranty Association. He read his written testimony **EXHIBIT(bus34a08)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN HERTEL asked if there was any guarantee that even if the 2% assessment wasn't needed, it wouldn't be assessed anyway. **Mona Jamison** said she thought there was a provision which allowed the abatement deferral or credit for each of the contributing insurers, if in the opinion of the association, it would result in more funds than necessary. Before this section was drafted, we consulted with a national legal expert to make sure this language would work.

SEN. FRED THOMAS asked the meaning of "abate, defer or credit." **Frank Cote** said if there was no need for the 2%, even if the assessment took place, no money would change hands.

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. GLENN ROUSH asked if the 2% assessment in Class B also covered the assessment in Class A. **Frank Cote** said it didn't -- Class A assessments were done for administration purposes.

SEN. FRED THOMAS asked if the contingency voidness clause invalidated **SB 414**. **Russell Hill, State Auditors Office,** said if the ballot issue failed, not all the bill would become void because there was language in the bill that would become effective when it passed -- the legislature might think the association would be a governmental unit that's subject to CI-75 and it clearly states they can subject their operations to "the discipline of the competitive market."

Mona Jamison said other committees were hearing bills like this

-- if the Court throws out CI-75, then there is a contingency voidness provision. As for the Class A assessment, it's been \$150 and would be frozen there.

Closing by Sponsor:

SENATOR STANG closed. I believe that the proponents outlined the need for the bill and the technicalities in the bill. As a member of the CI-75 committee, Mr. Rob Natelson doesn't believe this issue would fall under CI-75, but once that bill passed the people, Mr. Natelson lost his standing and he is not the only one who can say how it applies. If there is one voter out there who thinks that CI-75 applies, that person could challenge this issue.

{Tape : 2; Side : A; Approx. Time Counter : 4.2}

HEARING ON SB 377 AND SB 378

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS

Proponents: Frank Cote, Deputy Insurance Commissioner
Greg Van Horssen, State Farm Insurance

Opponents: None

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS. I have for your consideration **SB 377 and SB 378**. **Senate Bill 377** is the bill that submits the ideas of **SB 378** to the voters. Basically **SB 378** is the same kind of issue, but it deals with property and casualty insurance. The Glacier General Co. in Missoula went broke and this association had to pay off some of its bills. He handed in his testimony **EXHIBIT (bus34a09)**. He also handed in a fact sheet **EXHIBIT (bus34a10)** and a letter **EXHIBIT (bus34a11)** as an example of the action that happened at the Miles City airport in which a plane crashed and the airport and the airplane happened to be insured by the same company. Had not this Association been available and paid the bill, the City of Miles City would probably have gone bankrupt.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner. I rise in support of **SB 377 and SB 278**. This is the property-casualty fix, the same

as has been done with the life and health insurance guarantee association. The amendments **EXHIBIT (bus34a12)** you have in front of you are essentially the same amendments that I explained on the life and health guarantee association bill only they deal with property-casualty.

Greg Van Horssen, State Farm Insurance. State Farm does support these bills. State Farm has expressed a concern about the use of the term "may" on page 3, lines 4 and 19 as opposed to the word "shall".

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. FRED THOMAS asked **Mr. Cote** about the words "may" and "shall", and is there any thought of making that change. Mr. Cote said that the reason that "may" is in there is because if you put the word "shall", as "they shall refund it," we have a couple of accounting issues with the insurance companies. It also may violate the CI-75 fix that is trying to be solved. It may at that point be an issue where it is said, "Well, all of what we were trying to do in these bills and because it says 'you shall', there is now no assessment." It has to be refunded; therefore even though there had been assessed the two percent, and it had to be refunded, there was no assessment; therefore it bases back to zero and if at a future point, there is an insolvency, and an assessment is needed, then CI-75 would have been violated because the baseline would have been at a zero.

Closing by Sponsor:

SENATOR STANG closed. I believe we have explained the issue and the question of "may" or "shall" very well. "May" prevents them from rebating the whole thing, but they may rebate the parts that they don't need.

{Tape : 2; Side : A; Approx. Time Counter : 11.4}

EXECUTIVE ACTION ON SB 240

Motion: **SEN. COCCHIARELLA** moved that SB 240 DO PASS.

Discussion: **Motion:** **SEN. MCCARTHY** moved that SB 240 BE AMENDED.

Discussion: Mr. Bart Campbell explained the amendments **EXHIBIT (bus34a13)**. First strike Section 1 completely in existing

bill. On page 2, there is a new Subsection 3 and 4 which states that when a contractor makes this kind of security deposit, the interest on that would go back to the contractor. It also requires a contractor to extend to the subcontractors the opportunity to participate in putting up that security deposit. If they were to do so, the interest in the deposit would then go on a prorata basis to those who had participated. There is a New Section 2 which states that the maximum amount of retainage that a government entity could retain would be 5%. At the same time, that same percentage is what would be limited for the contractor to withhold from the subcontractors. Number 4, page 2, line 2 deals with private people dealing with contractors (excepts out residential construction). Section 3 of the existing bill is struck in its entirety. Page 2, line 24, Subsection 3 is struck in its entirety and the new effective date is put in of July 1, 1999. Because of that in the applicability section, that also goes up to July instead of October.

CHAIRMAN HERTEL said the sponsor has indicated to him that these amendments are in agreement with his views. Maybe not all parties are satisfied but that may just be the way it is. He knows that they have worked together.

SEN. BEA MCCATHY asked about the time line. Mr. Campbell said that issue was not addressed in these amendments. **SEN. MCCARTHY** wanted to make an amendment, but **Mr. Carl Schweitzer**, representing the subcontractors said there is another bill coming through and is sponsored by **SENATOR BILL GLASER**. That bill addresses this issue. He would follow the bill and make sure if that bill does not pass through, he will get an amendment on this bill to take care of that time line.

SEN. VICKI COCCHIARELLA offered an amendment that would have the contractors pay interest back to the subcontractors if they had put up money in a retainage fee.

SEN. HERTEL expressed his dismay that since this bill had been heard on January 27, 1999, why has this amendment not been brought forward before today. He had visited with Carl and the sponsor and was very uneasy to go ahead with this amendment without the sponsor not even being made aware of this new amendment.

SEN. COCCHIARELLA said that she would wait and let them work it out on the floor.

Vote: Motion that SB 240 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 240 DO PASS AS AMENDED.
Motion carried unanimously. 7-0

{Tape : 2; Side : A; Approx. Time Counter : 22.7}

EXECUTIVE ACTION ON SB 331

Motion/Vote: SEN. MCCARTHY moved that SB 331 DO PASS. Motion
carried unanimously. 7-0

EXECUTIVE ACTION ON SB 275

Motion: SEN. ROUSH moved that SB 275 DO PASS.

Discussion: **Motion:** SEN. SPRAGUE moved that SB 275 BE AMENDED.

Discussion: Mr. Campbell explained the amendments
EXHIBIT (bus34a14).

The first is Number 3, page 1, line 26 which would require the
lists to be obtained quarterly. On page 2, following line 3,
there would be a new Subsection 4 stating that it would not
prohibit telephone calls thatexisting business
relationship. And effective date of July 1, 1999 was set.

Vote: Motion that SB 275 BE AMENDED carried unanimously. 7-0

Motion: SEN. THOMAS moved that SB 275 DO PASS AS AMENDED.

Discussion: SEN. COCCHIARELLA said that this bill would be too
cumbersome for political parties, charitable groups, nonprofit
groups and others. She felt that what was needed more than
anything was the education of the public. There are several ways
right now that people can get their names off calling lists.
This is an important issue, but this bill, as presented, is not
the way. SEN. MCCARTHY agreed with SEN. COCCHIARELLA.

SEN. SPRAGUE said that there is value in the bill and it was
supported by the Secretary of State, but possibly the unintended
consequences in some of the punitive damages, etc. may be more
harmful than the good the bill would bring.

Motion/Vote: SEN. COCCHIARELLA moved that SB 275 BE TABLED.
Motion carried 5-2 with SENATORS THOMAS AND SPRAGUE voting no.

{Tape : 2; Side : A; Approx. Time Counter : 37}

EXECUTIVE ACTION ON SB 373

Motion: SEN. MCCARTHY moved that SB 373 DO NOT PASS.

Discussion: SEN. SPRAGUE said that he did not use ATM's but people have to pay for conveniences. SEN. MCCARTHY said that she uses these all over the country and does not want them to be removed.

Substitute Motion/Vote: SEN. THOMAS made a substitute motion that SB 373 BE TABLED. Substitute motion carried unanimously.
7-0

{Tape : 2; Side : A; Approx. Time Counter : 40.9}

EXECUTIVE ACTION ON SB 347

Motion: SEN. SPRAGUE moved that SB 347 DO PASS.

Discussion: Motion: SEN. SPRAGUE moved that SB 347 BE AMENDED.

Discussion: Mr. Campbell explained the amendments
EXHIBIT (bus34a15).

On page 7, line 23 strike "buy" and insert "on a date set by the Board but no later than". This allows them to do some winding down of business as they get to that termination date.

Vote: Motion that SB 347 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. ROUSH moved that SB 347 DO PASS AS AMENDED.
Motion carried unanimously. 7-0

{Tape : 2; Side : B; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 410

Motion: SEN. SPRAGUE moved that SB 410 DO PASS.

Discussion: Mr. Campbell said that the Bed and Breakfast establishments and the Dude Ranches were covered under existing statutes.

SEN. THOMAS asked if this bill would prohibit someone from bringing in a bottle of beer and drinking it with dinner. **SEN. COCCHIARELLA** explained that the law right now prohibits that, and to some it is unclear but very clear to others. This bill is intended to make it very clear that it is illegal to have a bottle club. In the discussion of this, the cabaret licenses do not allow people to have a full liquor license and not to make the large investment. There are a few problems of quotas but there is another bill to fix that problem.

Vote: Motion that SB 410 DO PASS carried 6-1 with SENATOR THOMAS voting no.

ADJOURNMENT

Adjournment: 11:10 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus34aad)